

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 296 of 1992
with
CIVIL APPLICATION No.4832 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SIDDHARATHA CO-OPERATIVE HOUSING SOCIETY LTD
Versus
GUJARAT STATE CO-OPERATIVE HOUSING SOCIETY LTD

Appearance:

1. Special Civil Application No. 296 of 1992
MR AJ SHASTRI for Petitioner No. 1
MR DF AMIN for Respondent No. 1
MS MANISHA LAVKUMAR for newly added Respondent
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CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 10/10/2002

ORAL JUDGEMENT

1. Leave to add District Registrar, Co-op Societies, Junagadh District, Junagadh as respondent No.2.

2. Notice to newly added respondent. Ms.Manisha Lavkumar, learned AGP waives service of notice.

3. Heard Mr.Shastri, learned Counsel for the petitioner, Mr.D.F.Amin, learned Counsel for the respondent No.1. With the consent of parties, when the Civil Application is taken up for hearing, the main matter itself is taken up for final hearing today.

4. The petitioner is a society, which has taken a loan from respondent No.1 Bank. The contention of the petitioner is that the installments are being paid regularly. However, the contention of respondent No.1 Bank is that the outstanding amount is not paid regularly. It is the case of the petitioner society that the interest which is debited in the account of the petitioner is without there being any authority and there is also unauthorised debiting of the interest and penal interest in the account of the petitioner society. It has been submitted on behalf of the petitioner that so far as the liability of the loan is concerned, there is no dispute but on the question of interest and penal interest since no proper calculation and debiting is not done by the respondent Bank, complications are arising and as a result thereof the members of the petitioner society are required to make the payment of much higher amount than the amount legally recoverable. Therefore, Mr.Shastri has submitted that if independent authority is directed to look into the matter, it would serve the purpose of the petitioner. Mr.Amin, learned Counsel appearing for respondent No.1 has no objection if such course is adopted. On behalf of respondent No.2, District Registrar, the learned AGP has left the matter to the Court.

5. Considering the facts and circumstances of the case and in view of the aforesaid, I am of the view that the following directions would meet with the ends of justice:

5.1. The petitioner shall make a detailed representation to the District Registrar, respondent No.2 herein, within a period of one month from today together with the proof of the payment already made by the members of the petitioner society to respondent No.1, Bank.

5.2. After such representation is received by the

District Registrar, he shall call upon respondent No.1 Bank to produce, if required, necessary books of account and he shall also verify the correctness of the interest entered and penal interest etc., and he shall also verify as to whether any mistake is committed in the debiting or crediting of any amount or not.

5.3. The aforesaid exercise shall be undertaken by the District Registrar after hearing both the sides and the District Registrar shall take final decision upon the representation by arriving at a figure which would be required to be paid by the petitioner society to the respondent Bank. The aforesaid decision shall be taken by the District Registrar within a period of three months from the date of receipt of the representation.

5.4. Until the District Registrar takes a decision, the petitioner society and its members shall continue to pay regular installments Rs.6,600/= per month and the balance outstanding amount of the liability, if any, shall be subject to the final decision, which will be taken by the District Registrar, as indicated earlier.

5.5. In the representation, it will be open to the petitioner society to raise the contention regarding the benefit of one-time settlement, if permissible under the law. This Court is not expressing any opinion on the said aspect. The District Registrar shall consider the matter and shall also examine the said aspect, while taking final decision.

5.6. Until the District Registrar finally takes a decision, the execution of recovery shall remain stayed.

6. As per the aforesaid observations and directions, the petition is disposed of. Rule accordingly. In view of the order passed in the main matter, no order in CA.

10-10-2002 (Jayant Patel, J.)

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